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## EEOC and Leigh Ann Ornelas v. Milgard Manufacturing Incorporated d/b/a Milgard Windows

Judge Marcia S. Krieger

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## **EEOC and Leigh Ann Ornelas v. Milgard Manufacturing Incorporated d/b/a Milgard Windows**

### **Keywords**

EEOC, Leigh Ann Ornelas, Milgard Manufacturing Incorporated, Milgard Windows, 01-MK-1731 (OES), Consent Decree, Disparate Treatment, Retaliation, Hiring, Race, African American or Black, Manufacturing, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Case No. 01-MK-1731 (OES)**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff, and

LEIGH ANN ORNELAS,

Plaintiff/Intervenor.

v.

MILGARD MANUFACTURING INCORPORATED,  
d/b/a MILGARD WINDOWS, a Washington corporation,

Defendant.

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**CONSENT DECREE**

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## **I. RECITALS**

1. This Consent Decree (“Consent Decree” or “Decree”) is made and entered into by and between, Plaintiff United States Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or the "EEOC"), the Intervenor, Leigh Ann Ornelas (hereinafter referred to as “Ms. Ornelas”), and Defendant Milgard Manufacturing, Inc. (hereinafter referred to as “Milgard” or “the Company”). EEOC, Ms. Ornelas, and Milgard are collectively referred to herein as "the Parties." This Decree resolves the cause of action instituted by the EEOC by filing its Complaint and Amended Complaint (hereinafter “Complaint”) against Milgard in the United States District Court for the District of Colorado, Civil Action No. 01-MK-1731 (hereinafter referred to as the “Action”). This Decree also resolves Charge No. 320990864, (hereinafter referred to as the "Individual Charge"), filed by Ms. Ornelas with the EEOC on June 9, 1999.
2. This matter was instituted by the EEOC, an agency of the United States, alleging that Milgard, a Washington corporation, failed to hire applicants because of their race, African American, and/or color, Black, and constructively discharged Ms. Ornelas in retaliation for opposing such discriminatory patterns or practices, all in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et. seq.* (“Title VII”).
3. Ms. Ornelas intervened in this action to pursue her interests.
4. The Parties, desiring to settle this action and all claims that could have been raised therein, by an appropriate consent decree, agree to the jurisdiction of this Court over the Parties and the subject matter of this Action, and agree to the power of this Court to enter this consent decree.
5. This Decree, being voluntarily entered into by the Parties, shall not constitute an admission or an adjudication of the merits or the damages of this case.
6. This Decree is final and binding upon the Parties and their successors and assigns, as to all issues hereby resolved.
7. The EEOC and Milgard agree that this Consent Decree fairly resolves the issues alleged by EEOC in this lawsuit, and constitutes a complete resolution of all the EEOC's claims which were made or could have been made against Milgard in this Action.

8. Ms. Ornelas and Milgard agree that this Consent Decree fairly resolves the issues alleged by Ornelas in this lawsuit, and constitutes a complete resolution of all Ms. Ornelas' claims that were made or could have been made against Milgard in this Action.
9. The Company denies that it has engaged in any conduct in violation of Title VII, or any state, local or other federal law. The Company is entering into this Consent Decree to avoid the expense and disruption related to this litigation.
10. This Decree, including attached exhibits, constitutes the complete and exclusive agreement among the Parties with respect to the matters referred to herein. All terms of the agreement among the Parties in resolution of this Action are stated in this Decree, and there are no promises among the Parties, oral or written, other than those recited in this Decree.

NOW, THEREFORE, the Court having examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the Parties, it is ORDERED, ADJUDGED AND DECREED THAT:

## **II. JURISDICTION**

11. The Court has jurisdiction over the parties and the subject matter of this lawsuit. The EEOC's Complaint and Ms. Ornelas' Complaint in Intervention assert claims that, if proven, would authorize the Court to grant the monetary and equitable relief set forth in this Decree against Milgard. The Court shall retain jurisdiction over this Action for the duration of the Decree for the purposes of entering all orders, judgments and decrees as necessary to implement the relief provided herein.
12. This Decree conforms to the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the Parties, those for whom the EEOC seeks relief, and the public.

### III. DEFINITIONS

13. **Claimants** - An individual who submits a Class Claim Form (Exhibit A) to the Class Fund Administrator within the Claims Receipt Period, pursuant to Paragraph 53 of this Decree.
14. **Claim Share** - The settlement amount for which a Class Member is determined to be eligible under Paragraphs 53 and 54 of this Decree.
15. **Class Administrator** - The individual retained to carry out the administrative functions necessary to distribution of the Class Settlement Fund, as more specifically provided in Paragraph 52 of this Decree.
16. **Class Member** - A Claimant who is determined to meet the eligibility criteria pursuant to Paragraph 53 of this Decree.
17. **Class Settlement Fund ("Class Fund")** - The sum of \$2,350,000 paid by Defendant in full settlement of all claims for monetary relief to members of the class, as described in Subparagraph 51.1 of this Decree.
18. **Class Liability Period** - The Class Liability Period is January 1, 1997, through the Effective Date of this Decree.
19. **Complaint of Discrimination, Harassment, or Retaliation** - A complaint of discrimination, harassment, or retaliation, shall be any complaint, which comes to the attention of a supervisor or manager and makes allegations which are appreciated by any supervisor or manager as an allegation of discrimination, harassment, or retaliation. For example, an employee who complains to a supervisor about being called racial slurs, has made a complaint which is appreciated to be an allegation of harassment, regardless of whether the employee complains in writing or expressly uses the terms "discrimination" or "harassment." By contrast, a complaint by a Black employee that he was unfairly denied overtime, may not be appreciated as an allegation of discrimination, unless the employee articulates that he believes he is being treated differently because of race, or unless other circumstances, such as previous complaints of discrimination, exist which cause a supervisor or manager to realize the employee is complaining about discrimination.

- 20. **EEO** - The term "EEO" shall mean "equal employment opportunity."
- 21. **EEO Coordinator** - The individual at the Facility, selected by Milgard to be responsible on a day-to-day basis for compliance with this Consent Decree.
- 22. **EEO Consultant** - The EEO professional selected by Milgard to consult with and oversee the work of the EEO Coordinator and to serve as the primary contact with the Monitor (as defined below) and the EEOC, concerning the Consent Decree.
- 23. **Effective Date** - The Effective Date of this Decree is the date on which the Court enters the Consent Decree, after hearing, if required.
- 24. **Facility** - The term "Facility", as used herein, shall refer to Milgard's facility presently located at 11000 East 40<sup>th</sup> Avenue, Denver, Colorado, and any other facility which Milgard may relocate to or otherwise operate in Colorado during the term of this Decree.
- 25. **Monitor** - An independent consultant with expertise in EEO and personnel matters, selected by the EEOC. The Monitor's primary functions are to monitor Milgard's compliance with the Decree and advise the EEOC. The term "Monitor" in this Decree has no reference to a "monitor" under Federal Rule of Civil Procedure 53.
- 26. **Parties** - The Parties to this Decree are the EEOC, Ms. Ornelas, and Milgard.
- 27. **Private Counsel** - Attorneys representing Plaintiff/Intervenor, Leigh Ann Ornelas, in this action.

#### **IV. GENERAL PROVISIONS**

- 28. **Scope** - This Consent Decree covers all Milgard employees at the Facility.
- 29. **Term of Consent Decree** - This Consent Decree shall remain in effect for three (3) years subsequent to the Effective Date, unless extended by the Court for good cause shown.
- 30. **Compliance with EEO Laws** - Nothing in this Consent Decree shall be construed to limit or reduce Milgard's obligation to comply with the statutes enforced by the Commission: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et. seq.*, Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et. seq.*, Age Discrimination in Employment Act, 29 U.S.C. §621, *et. seq.*, Equal Pay Act, 29 U.S.C.

§206(d). Except as expressly stated in this Decree, nothing in this Decree shall enlarge or expand Milgard's obligations or the obligations of its officers, agents, employees, successors and/or assigns, under any federal or state law, including but not limited to the laws set forth in this paragraph.

- 31. Effect of Consent Decree** - Milgard's compliance with this Consent Decree will fully and completely resolve all issues of law and fact which were and/or could have been raised by the Commission and/or Ms. Ornelas in litigation arising out of the above-referenced charge, as to acts and practices up to the Effective Date of this Consent Decree.
- 32. Administrative Costs** - Milgard will pay the following expenses incurred in connection with the administration of the Consent Decree:
- the compensation of the Monitor and reasonable costs incurred by the Monitor in performing the duties of the Monitor, as specified in the Service Provider Contract for the Monitor's services;
  - the compensation of the Class Fund Administrator and reasonable costs incurred by the Class Fund Administrator in performing the work of the Class Fund Administrator, as specified in the Service Provider Contract for the Class Fund Administrator's services; and
  - reasonable costs incurred in management of and disbursements from the Class Fund, including but not limited to postage, clerical supplies, clerical services, taxes incurred as a result of interest earned by the Class Fund, accounting services, and any fees for tax preparation services required in connection with the Class Fund.

Provided, however, that Milgard's obligation to pay such expenses under the Consent Decree shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000), unless the EEOC files an enforcement action under Paragraph 61 of this Decree. If the EEOC files an enforcement action under Paragraph 61 of this Decree, Milgard's obligation to pay the administrative expenses enumerated in this Paragraph 32, may exceed \$250,000.



- 33. Severability** - If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following shall apply to insure that the Decree continues to effectuate the intent of the Parties. The provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a result of such legislative act or court decision, shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Parties would be undermined. Disputes over the application of this Severability provision shall be resolved pursuant to the dispute resolution procedures of Section X ("Resolution of Disputes and Enforcement of Consent Decree") of this Decree.
- 34. Non-Admission of Liability** - This Decree shall not constitute an adjudication and/or finding on the merits of the case. By entering into this Decree, the Company does not admit that the allegations of the Complaint and Complaint in Intervention and/or the Commission's findings with respect to the Individual Charge were correct and maintains its contention that none of its acts, omissions, programs or practices has at any time violated Title VII or any other federal, state or local law. The Decree does not constitute evidence of any violation by the Company of Title VII or any other federal state or local law, regulation, or order. The Parties, individually or collectively, shall not seek to use, or use directly or indirectly, this Decree or the fact of its existence as evidence in any other matter or action involving the Company, except in this Action as is necessary to enforce the specific terms of this Decree. The EEOC's reasonable cause determination on the Ornelas charge of discrimination will not be used by the EEOC as a basis to presume or as evidence that discrimination occurred, when deciding any other charge of discrimination.
- 35. Interpretation** - The terms of this Decree are the product of joint negotiations and shall not be construed as having been authored by one of the Parties rather than another.

## **V. EFFECT ON RIGHTS**

- 36. Limit on Waiver of Commission Claims** - Nothing in this Consent Decree shall be construed to preclude the Commission from bringing suit to enforce this Consent Decree in accordance with the enforcement provisions of Section X (“Resolution of Disputes and Enforcement of Consent Decree”), below. Neither does this Consent Decree preclude the Commission from filing lawsuits based on charges not resolved in this Consent Decree.
- 37. EEOC Rights Reserved** - The Commission reserves all rights to proceed with respect to matters not covered in this Consent Decree and to secure relief on behalf of aggrieved persons not covered by this Consent Decree.
- 38. Charges Pending On Or Filed After the Effective Date** - Any individual charge of discrimination against Milgard which is pending with the EEOC on the Effective Date or is filed with the EEOC, whether directly with the EEOC, or through the Colorado Civil Rights Division, after the Effective Date of this Consent Decree, will be processed by the Commission in accordance with its standard procedures, including any charge based on conduct which occurred or is alleged to have occurred prior to the Effective Date of this Consent Decree. Provided, however, that any Class Member who accepts his or her Claim Share will be barred from commencing any civil action based on or including claims which are covered by the Class Member Release (Exhibit B) signed by the Class Member in consideration for receipt of the Claim Share.
- 39. No Effect On Limitations Periods** – Nothing in this Decree shall be deemed (a) to waive or stay the running of any statute of limitations or deadline by which any person, party, claimant, or other entity must file a charge or complaint with any administrative agency or file a complaint in court or take other action, or (b) to reinstate the right of any person or other entity to take any action for which the time within which that action must be taken has passed.

## **VI. AFFIRMATIVE RELIEF**

### **40. Notice and Posting of Decree Notice**

**40.01 Posting** - Within sixty (60) days of the Effective Date of this Decree, Milgard shall conspicuously post the Notice of Final Approval of Settlement attached hereto as Exhibit C, in locations where all other employee-related notices are posted at the Facility.

**40.02 Orientation on Consent Decree** - Prior to posting the Notice of Final Approval, as required in the preceding Paragraph 40.01, Milgard shall conduct orientation meetings to advise all supervisors and managers at the Facility, and human resources employees with authority over Milgard employees in Colorado (a) of the terms and conditions of the Decree, with emphasis on the anti-retaliation provisions of the Decree and (b) that knowing failure to comply with the terms and conditions of the Decree will result in appropriate discipline, up to and including termination of employment.

**40.03 EEOC Attendance at Orientation** - At least ten (10) days prior to any scheduled orientation under this Paragraph 40.03, Milgard will provide EEOC notice of the date, time and location of the scheduled orientation. EEOC, at its discretion, may attend and observe one or more of the orientation sessions and after the training, may provide constructive suggestions to the EEO Coordinator as to the content and presentation of the training. EEOC representatives who attend orientation sessions, will not interject themselves into the training or otherwise participate except as invited by the program presenter(s).

### **41. Injunction**

**41.01 No Discrimination** - Milgard shall consider all African-American and/or Black applicants on the same basis as all other applicants.

**41.02 No Retaliation** - Milgard shall not retaliate against any employee or class member for his or her participation in the EEOC's investigation of the Individual Charge and its allegations and/or in this Action, or for asserting any rights under this Decree.

**42. EEO Consultant And EEO Coordinator**

**42.01 Appointment of EEO Coordinator** - Within thirty (30) days of the Effective Date of this Consent Decree, Milgard will identify an existing employee or hire a new employee, who has expertise in EEO and personnel matters, to serve as EEO Coordinator for the Facility. Should the person serving as the EEO Coordinator cease to do so for any reason, Milgard shall provide written notice to the EEOC of the identity of the person designated to assume the role of EEO Coordinator within 21 days of Milgard's becoming aware of the need to designate a new EEO Coordinator. Milgard has identified Yolanda Malberg, Director of Employee Relations for the Facility, to serve initially in the capacity of EEO Coordinator under this Decree.

**42.02 Responsibilities of EEO Coordinator** - The EEO Coordinator will have day-to-day responsibility at the Facility for coordinating Milgard's compliance with anti-discrimination laws and Milgard's compliance with this Consent Decree, and maintaining records required by this Decree.

**42.03 Appointment of EEO Consultant** - Within thirty (30) days of the Effective Date of this Consent Decree, Milgard will identify an individual with extensive knowledge and experience in EEO and personnel matters to serve as EEO Consultant. Should the person serving as the EEO Consultant cease to do so for any reason, Milgard shall provide written notice to the EEOC of the identity of the person designated to assume the role of EEO Consultant within 21 days of Milgard's becoming aware of the need to designate a new EEO Consultant. Milgard has identified Terry R. Owens to serve initially in the capacity of EEO Consultant under this Decree.

**42.04 Responsibilities of EEO Consultant** - Milgard's EEO Consultant will be responsible for oversight of the EEO Coordinator's work in coordinating Milgard's compliance with anti-discrimination laws at the Facility and Milgard's compliance with this Consent Decree, and in maintaining records required by this Decree. In addition, the EEO Consultant will be responsible for preparing and

submitting the reports required by this Decree, acting as the liaison between Milgard and the EEOC, meeting with the Monitor as necessary, assisting in development and implementation of Milgard's EEO training program, as required by this Decree, and assisting in review and revision of Milgard's policies and procedures, as provided by this Decree.

**43. Consent Decree Monitor**

**43.01 Appointment of Monitor** – Within thirty (30) days of the Effective Date of this Consent Decree, the EEOC will provide written notice to Milgard of the name and contact information of the Monitor.

**43.02 Monitor Responsibilities** - During the term of the Consent Decree, the Consent Decree Monitor will have the following responsibilities: (a) to meet with Milgard's EEO Consultant at least semi-annually, regarding Milgard's compliance with this Decree; (b) to report to EEOC and Milgard regarding Monitor's meetings with Milgard's EEO Consultant; (c) to evaluate whether Milgard is in compliance with the Decree; (d) to report to EEOC and Milgard the Monitor's conclusions and recommendations regarding Milgard's compliance or non-compliance with the Decree. The Monitor may obtain professional opinions, reports, or studies as the Monitor deems necessary to carry out his/her responsibilities. Conferences between the Monitor and the EEO Consultant may be done by teleconference at the discretion of the Monitor.

**43.03 Contract for Monitor Services** - Upon the EEOC's determination of the individual proposed to serve as Monitor, the EEOC and Milgard will negotiate with the proposed Monitor a "Service Provider Contract," which will include among its terms: (a) the terms for compensation of the Monitor; (b) a description of the Monitor's areas of responsibility; (c) a listing of those actions which may be taken by the Monitor without seeking prior authorization by the EEOC and Milgard; and (d) the process by which the Monitor's invoices for fees and expenses will be processed and approved by the EEOC and Milgard, including a process for resolving disputes over such fees and expenses. If the EEOC and

Milgard are unable to reach agreement with a proposed Monitor on the terms of the Service Provider Contract, any dispute will be resolved through the enforcement procedures set forth in Section X ("Resolution of Disputes and Enforcement of Consent Decree") of this Decree.

**43.04 Access to Information -** The Monitor shall, upon reasonable notice to the EEO Consultant, have reasonable access to relevant documents, and other sources of information necessary to exercise the Monitor's duties under this Consent Decree. The Monitor and the EEOC shall have reasonable access to review all non-privileged records maintained by Milgard relating to the implementation or administration of this Consent Decree.

**44. Evaluation of Compliance**

**44.01** By this Consent Decree, the Parties intend to generally require that Milgard (a) provide equal employment opportunities for African-American and Black applicants; and (b) engage in good-faith efforts to increase recruitment of African-American and Black applicants. The following provisions of this Paragraph 44 relate to evaluating Milgard's compliance with these two general requirements. These provisions are not intended to preclude the EEOC from establishing non-compliance with a specific requirement, such as the reporting or training requirements of this Decree.

**44.02** To facilitate evaluation of Milgard's compliance with the foregoing general requirements of this Consent Decree, Milgard will implement a system to seek voluntary disclosure of race/ethnicity information from job applicants. Milgard may elect to utilize a "tear-off" voluntary disclosure form provided with the job application, and immediately separated from the application upon submission, so as to ensure that any information disclosed on the voluntary disclosure form is not considered in the hiring decision. Milgard may, however, elect to utilize some system other than a "tear-off" voluntary disclosure form.

**44.03** Before implementing a system for voluntary disclosure of race/ethnicity information, Milgard will provide the EEOC with a description of the proposed

system, including an explanation of how race/ethnicity information will be collected and maintained so as to ensure that the information is secure from manipulation or alteration of data, and is not available to hiring decision-makers. Any dispute over the proposed system will be resolved in accordance with the enforcement procedures in Section X (“Resolution of Disputes and Enforcement of Consent Decree”).

- 44.04** The Parties agree that in evaluating Milgard's compliance with the general requirements of this Decree, it is appropriate to (a) compare the proportion of African-American and Black employees hired during a specific period, to the proportion of African-American and black applicants during the same period; and (b) compare the proportion of African-American and Black applicants during each specific reporting period, or other mutually agreeable period, to the proportion of African-Americans and Blacks in the labor force in the geographic area from which applications for employment at the Facility are received during that same period. The Parties recognize that there may be other appropriate methods to evaluate Milgard's compliance, and do not intend to mandate the use of any particular methodology.
- 44.05** The Parties agree that Milgard may establish its compliance with the general requirements of this Decree by demonstrating, for example and without limiting the types of evidence that may demonstrate compliance, that (a) race or color was not a motivating factor in any decision not to hire any particular African-American or Black applicant(s); and/or (b) it exercised reasonable efforts to attract qualified African-American and Black applicants.
- 44.06** Disputes arising under this Paragraph 44 shall be resolved in accord with Section X of this Decree, “Resolution Of Disputes And Enforcement Of Consent Decree,” with the additional requirement that, should the EEOC conclude that Milgard has failed to comply with its obligations under Paragraph 44, the EEOC will provide written notice to Milgard of the EEOC’s conclusion, together with a description of the evidence supporting that conclusion, and will meet with Milgard

representatives to discuss the EEOC's conclusion and supporting evidence, to consider any response which Milgard may present, and if the EEOC remains convinced that Milgard has failed to comply, to negotiate with Milgard toward a resolution of the dispute over Milgard's compliance. These steps must be taken before the EEOC may bring an action for enforcement in the Court based on Milgard's alleged noncompliance with Paragraph 44.

#### **45. EEO Training**

**45.01 Development of EEO Training Program** - Within one-hundred twenty (120) days of the Effective Date of this Decree, Milgard shall submit to the EEOC proposed EEO training programs for (a) non-supervisory employees, (b) supervisory employees, and (c) human resource employees at the Facility. Each training program will include the following information: (a) a detailed agenda; (b) curriculum vitae(s) for the individual(s) who will conduct the training; and (c) a plan to ensure that all employees receive the required training. Within fourteen (14) days of receiving Milgard's training proposal, the EEOC will advise of any recommended changes. Any dispute between Milgard and EEOC as to the Training Program will be resolved through the Enforcement procedures in Section X ("Resolution of Disputes and Enforcement of Consent Decree").

#### **45.02 Amount of Training Required**

**45.02.01 Non-Supervisory Employees** - On an annual basis, Milgard will provide non-supervisory employees at the Facility at least one (1) hour of EEO training. Additionally, at least one (1) hour of EEO training will be provided to all non-supervisory employees within thirty (30) days of hire. This training may be by in-person presentation or some combination of in-person presentation and presentation by videotape, online program, or other similar medium.

**45.02.02 Management and Supervisory Employees** - On an annual basis, Milgard will provide supervisory and management employees at the Facility with at least four (4) hours of EEO training. Additionally, at



least four (4) hours of EEO training will be provided to all supervisory and management employees within thirty (30) days of hire or promotion into a supervisory position. This training may be by in-person presentation or some combination of in-person presentation and presentation by videotape, online program, or other similar medium.

**45.02.03 Human Resource Employees** - On an annual basis, Milgard will provide human resource employees at the Facility, or having responsibility for the Facility, with at least twelve (12) hours of EEO training. Additionally, at least twelve (12) hours of EEO training will be provided to all human resource employees within thirty (30) days of hire or promotion into a human resource position at the Facility, or with responsibility for the Facility. This training requirement may be met by up to four hours of Company-presented training, with the remainder provided by attendance at third-party prepared and presented seminars or presentations, provided that all of the required topics are covered in either Company-presented or third-party presented programs.

**45.03 Required Subjects of Training** - The EEO training programs shall include:

- for non-supervisory, supervisory and management, and human resources employees, instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Pregnancy Discrimination Act;
- for non-supervisory, supervisory and management, and human resources employees, an explanation of job descriptions and their use, and review of Milgard's non-discrimination employment policies with particular emphasis on the complaint procedure and prohibitions on retaliation;

- for supervisory and management, and human resources employees, instruction on any policies related to this Consent Decree, such as: the job descriptions; hiring and promotion procedures; advertising and recruitment procedures;
- for supervisory and management, and human resource employees, instruction on the specific requirements of this Consent Decree and the proper procedures for responding to complaints of discrimination or harassment.

**45.04 EEOC Attendance at Training** - At least thirty (30) days prior to any scheduled training under this Paragraph 45, Milgard will provide EEOC notice of the date, time and location of the scheduled training. EEOC, at its discretion, may attend and observe one or more of the training sessions and after the training, may provide constructive suggestions to the EEO Coordinator as to the content and presentation of the training. EEOC representatives who attend training sessions, will not interject themselves into the training or otherwise participate except as invited by the program presenter(s).

#### **46. Modification and Implementation of EEO Policies and Procedures**

**46.01 Review of Policies** - During the first year of this Decree, the EEO Coordinator and EEO Consultant shall review Milgard's existing policies and procedures governing the Facility, and when necessary, work with Milgard management to develop and implement new and/or revised policies and procedures to provide equal employment opportunities for African American and Black applicants and employees. During the second and subsequent years of this Decree, Milgard may develop additional policy revisions to provide equal employment opportunities.

**46.02 EEOC Input** - At least forty-five (45) days prior to implementation of any new or revised policy or procedure developed pursuant to Subparagraph 46.01, the proposed policy or procedure shall be submitted to the EEOC and the Monitor. Within thirty (30) days of receipt of the proposed policy or procedure, the EEOC and/or the Monitor may submit to the EEO Consultant any suggested changes to

the proposed policy or procedure, provided that Milgard shall retain complete discretion over the final content of the policy or procedure.

**46.03 EEOC Input Not a Waiver** - Under no circumstances shall the EEOC, by commenting or electing not to comment upon Milgard's proposed changes or amendments, be deemed to have waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from implementation of any such policy.

**46.04 Policies to be Modified or Developed**

**46.04.01 Job Descriptions** - By no later than six (6) months after the Effective Date of this Decree, Milgard will adopt and publish to employees detailed job descriptions which include duties and minimum qualifications for each position in existence at the Facility. The job descriptions shall be developed in accordance with professional standards of job analysis. The job descriptions shall be accessible to all employees and shall be referenced in any job posting. Publication of the job descriptions may be achieved by any one or more of the following methods: (a) distributing copies to employees; (b) posting copies in areas where communications to employees are routinely posted; and (c) providing written notice to employees of the existence of the job descriptions and of where an employee may review the job descriptions.

**46.04.02 Hiring Procedures** - By no later than six (6) months after the Effective Date of this Decree, Milgard will adopt and publish to employees hiring procedures, to include at least the following: (a) clear and objective hiring criteria; (b) job posting of available non-managerial positions to employees, including minimum qualifications and application deadlines; (c) requirement that successful candidates be selected from among the pool of qualified applicants; and (d) publication of the policies and hiring criteria to employees and

applicants. Publication of the hiring procedures may be achieved by any one or more of the following methods: (a) distributing copies to employees; (b) posting copies in areas where communications to employees are routinely posted; and (c) providing written notice to employees of the existence of the hiring policies and of where an employee may review the hiring policies.

**46.04.03 Job Advertising** - By no later than six (6) months of the Effective Date of this Decree, Milgard shall implement job advertising policies which include advertising in the Montbello community, and in publications targeted to African American and/or Black individuals.

**46.04.04 Recruitment** - By no later than six (6) months of the Effective Date of this Decree, Milgard shall implement recruitment policies which target African-American and Black communities, including without limitation, outreach to Montbello High School, and the Urban League.

**46.04.05 Management Evaluation and Accountability Policy** - By no later than six (6) months of the Effective Date of this Decree, Milgard shall modify existing procedures for performance evaluation to include in the essential factors upon which managers and supervisors at the Facility are evaluated for performance and compensation, a factor encompassing performance in contributing to compliance with this Decree.

## **VII. RESOLUTION OF CLAIMS ASSERTED ON BEHALF OF INTERVENOR**

- 47. Terms Of Resolution** - In resolution of all claims raised in her behalf by the EEOC in its Complaint and in the Complaint in Intervention or which could have been raised in her behalf in this Action, Milgard will make payments to Ms. Ornelas and her counsel as described in Paragraphs 48 and 49 of this Decree, below. Ms. Ornelas will execute the Agreement And Release attached to this Consent Decree as Exhibit D. Within ten (10) days of execution of the Agreement And Release and delivery of payments to Ms.

Ornelas and her counsel pursuant to Paragraphs 48 and 49, counsel for the Parties shall submit a stipulation to the Court of compliance with the terms of this Decree in resolution of claims in behalf of Ms. Ornelas, together with a proposed Order of Dismissal With Prejudice of all claims. If the Court is satisfied that the terms of resolution have been met, an Order of Dismissal With Prejudice of all claims on behalf of Ms.Ornelas, will enter.

- 48. Payment To Intervenor** - Defendant Milgard will pay to Ms. Ornelas the aggregate sum of Five Hundred Thousand Dollars (\$500,000.00), to be apportioned and identified as follows: Thirty-Two Thousand Four Hundred Thirteen Dollars and Thirty-Three Cents (\$32,413.33) as payment for back pay, less all required legal deductions, including but not limited to the employee's portion of FICA and federal and state income tax withholdings; Four Hundred Sixty-Seven Thousand Five Hundred Eighty-Six Dollars and Sixty-Seven Cents(\$467,586.67) for compensatory damages. Such payments shall be made within ten (10) days after Ms. Ornelas has executed the Agreement And Release that is Exhibit D to this Decree, provided that Ms. Ornelas does not exercise any right to revoke contained in the Release. Milgard shall prepare and forward appropriate tax reporting forms, Form W-2 for Intervenor's back pay award. On Form 1099-MISC for the compensatory damage award to Ms. Ornelas, Milgard shall designate Box 3, Other Income on Form 1099-MISC and not Box 7.
- 49. Payment To Intervenor's Counsel** - Ms. Ornelas is a prevailing party for purposes of an award of attorneys' fees and costs pursuant to 42 U.S.C. § 2000e-5(f). In full settlement of claims for attorneys' fees and costs, Milgard will pay the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) to Ms. Ornelas' counsel, Arckey & Reha, LLC. Such payment shall be made within ten (10) days after Ms. Ornelas has executed the Agreement And Release that is Exhibit D to this Decree, provided that Ms. Ornelas does not exercise any right to revoke contained in the Release. Milgard shall prepare and forward an appropriate tax reporting Form 1099-MISC. Intervenor's counsel represents and warrants that upon payment of monies stated in this Section VII, no application for fees or further request for attorney compensation will be made, except to the extent permitted under any

dispute arising under the terms of the Agreement and Release entered into between Milgard and Intervenor.

**50. Tax Treatment of Payments to Intervenor and Counsel Issues**

**50.01** Milgard shall make required reports to the Internal Revenue Service and other tax authorities.

**50.02** Milgard shall be responsible only for the employer's share of any taxes applicable to payments to Ms. Ornelas. Ms. Ornelas and/or her counsel who receive compensation under the Decree shall be responsible for and pay all other taxes owed to any governmental authority for their respective payments under this Decree.

**VIII. RESOLUTION OF EEOC CLASS CLAIM**

**51. Class Monetary Relief**

**51.01 Class Settlement Fund Amount** - Milgard shall pay the gross sum of \$2,350,000 ("Class Fund"), in resolution of the EEOC's claims of hiring discrimination based on race and/or color.

**51.02 Class Fund Account** - The Class Fund shall be deposited and maintained in a segregated account in the manner described herein:

**51.02.01** Within thirty (30) days after the Effective Date, Milgard shall establish and maintain a segregated account, which shall be known as the "Class Fund Account." Milgard shall fund the Class Fund Account with the full amount of the Class Fund within sixty (60) days of the Effective Date.

**51.02.02** The Class Fund Account shall be an interest-bearing account in an established financial institution selected by Milgard. All interest earned by the Class Fund Account will be the property of and paid to Milgard.

**51.02.03** The Class Fund will be distributed in accordance with the provisions of this Decree. Under no circumstances may Milgard make withdrawals or expenditures from the principal of the Class Fund,

except as provided in the Decree. Under no circumstances shall commitments for payments from the principal of the Class Fund for purposes allowed by this Consent Decree, exceed the amount of funds available in the Class Fund.

**52. Administration of Class Settlement**

**52.01 Class Fund Administrator** - The EEOC shall retain a Class Fund Administrator (“Administrator”) to perform all functions necessary to administration of the Class Fund, as described in this Decree and as detailed more fully in the contract for services negotiated with the Administrator. The Administrator shall be an agent for the EEOC in regard to his or her duties under the Consent Decree. The Administrator will have authority to employ the staff necessary to carry out his or her administrative functions, subject only to limitations provided in the negotiated contract for services.

**52.02 Contract For Administrator Services** - Upon the EEOC’s determination of the individual proposed to serve as Administrator, the EEOC and Milgard will negotiate with the proposed Administrator a “Service Provider Contract,” which will include among its terms: (a) the terms for compensation of the Administrator; (b) a description of the Administrator’s areas of responsibility; (c) a listing of those actions which may be taken by the Administrator without seeking prior authorization by the EEOC and Milgard; and (d) the process by which the Administrator’s invoices for fees and expenses will be processed and approved by the EEOC and Milgard, including a process for resolving disputes over such fees and expenses. If the EEOC and Milgard are unable to reach agreement with a proposed Administrator on the terms of the Service Provider Contract, any dispute will be resolved through the enforcement procedures set forth in Section X (“Resolution of Disputes and Enforcement of Consent Decree”) of this Decree.

**52.03 Responsibilities of Administrator** - As more fully detailed in the negotiated Service Provider Contract, the Administrator will have the following responsibilities:

- Develop and maintain a database of potential class members, based on records provided by Milgard, and by temporary staffing agencies utilized by Milgard during the Class Liability Period;
- Manage all efforts to provide notice to potential class members, including follow-up efforts to locate Potential Class Members;
- Receive, process, and evaluate claims for eligibility and settlement amount.

**52.04 Potential Class Member Database** - Within sixty (60) days after the Effective Date of this Decree, Milgard and the EEOC will provide the Administrator with all available records of individuals who unsuccessfully sought employment at the Milgard Facility during the Class Liability Period. From that information, the Administrator will create a database of Potential Class Members. When the Administrator has completed compilation of the database, a copy will be provided to EEOC and Milgard.

**52.05 Database Challenges** - Within thirty (30) days after receiving the completed database, Milgard may challenge any name on the database by submitting to the Administrator a statement of the basis for any such challenge, together with any supporting evidence. The Administrator will evaluate the evidence and issue a recommendation to the EEOC as to whether the challenged individual should be removed from the Potential Class Member database as ineligible. The EEOC will determine whether to remove the challenged individual from the database. The challenge process will be completed and the database finalized within sixty (60) days after the initial database was provided to the EEOC and Milgard under the previous Paragraph 52.04. When the Potential Class Member database is finalized, the Administrator will serve written notice on Milgard and the EEOC, the date of which notice will be the "Start Date" for purposes of the claim process.

**52.06 Notice of Class Settlement**

**52.06.01 Notification Period** - For a period of not more than one hundred twenty (120) days after the Start Date, ("Claims Receipt Period"), the



Administrator shall solicit and accept claim forms through the means set forth in Subparagraphs 52.06.02 - 52.06.05, below. No new claims will be accepted after conclusion of the Claims Receipt Period.

**52.06.02 Mailing** - To each individual on the Potential Class Member database, the Administrator will mail the following materials: (1) a "Cover Letter" in the form of Exhibit E; (2) a "Class Claim Form," Exhibit A, and (3) a postage paid return envelope addressed to the Administrator. The Parties will cooperate with the Administrator to make reasonable efforts to locate individuals whose mailings are returned or undeliverable. The Administrator will mail a Cover Letter and Class Claim Form to any individual who so requests.

**52.06.03 Notice in Selected Print and Radio Media** - The Administrator may place advertisements in selected print and/or radio media, directed to Black, Black immigrant, and African American communities in the Denver metropolitan area. The text of such advertisements shall be prepared according to and comply with the instructions set forth in Subparagraph 52.06.06, below.

**52.06.04 Toll-Free Telephone Number** - The Administrator will establish a toll-free telephone number with automated answering to receive telephone inquiries.

**52.06.05 Website** - The Administrator will develop a website to provide information and receive claims. The content of the website shall be prepared according to and comply with the instructions set forth in Subparagraph 52.06.06, below.

**52.06.06 Advertisement and Website Content** - Except for the written notices attached hereto, the content of any other notice, including without limitation print and radio advertisements, website notice, and information provided by telephone, shall be developed by the Administrator and submitted to the EEOC and to Milgard for approval

prior to being used. The content of such notices will be a summary of the information included in the Claim Form Cover Letter (Exhibit E), and shall not include the following: (a) any description of the substantive facts, allegations and claims of the Complaint and the Individual Charge, except as generally stated in the Cover Letter (Exhibit E); (b) any reference to the amounts paid under the Consent Decree; and/or (c) any reference to amounts which might be awarded to Class Members. Any disputes over content of notices shall be resolved in accord with Section X ("Resolution of Disputes and Enforcement of Consent Decree") of this Decree.

**52.06.07 Termination of Advertising** - At the conclusion of the Claims Receipt Period, all advertising activity shall cease. The content of the website and the Administrator's telephone message shall be revised to eliminate any reference to acceptance of claims, and shall refer to and provide information only on the status of existing claims. The revised content of the website and the telephone message shall be developed as prescribed by Subparagraph 52.06.06, above. The website and telephone number will remain active until the Administrator determines that they no longer serve a useful purpose in the processing of claims but in no case beyond 30 days after the date upon which all payments to Eligible Class Members have been mailed under Subparagraph 57.01 of this Decree.

**53. Processing Claims for Class Participation** - Individuals who deliver a completed Class Claim Form to the Administrator within the Claims Receipt Period ("Claimants") will be eligible for consideration to be Class Members. The determination of eligibility and claim share amount will be made as follows:

**53.01 Eligibility and Distribution Criteria** - At least forty-five (45) days before the Start Date, the EEOC will provide Milgard an explanation of the criteria for determining eligibility, and a formula for determining distribution of the Class

Fund. Within thirty (30) days of receiving the proposed eligibility criteria and distribution formula, Milgard may submit to the EEOC and Administrator any suggested changes to the proposed criteria and formula, provided that the EEOC shall retain complete discretion over the final criteria for determining eligibility and the formula for determining distribution of the Class Fund. Provided, however, that in no case shall any Class Member receive a total distribution of more than Twenty Thousand Dollars (\$20,000) from the Class Fund.

**53.02 Eligibility and Claim Share Determination** - All claims for class participation shall be submitted to the Class Administrator, who will analyze and determine eligibility and Claim Share, based on the eligibility criteria and distribution formula determined in Paragraph 53.01, above. The Administrator's determinations will be subject to review and approval by the EEOC. The EEOC retains final authority for determining class eligibility and distribution of the Class Fund.

**53.03 Class Distribution List** - The EEOC's determinations of eligibility and distribution will be set forth in a Class Distribution List, which will list the names and mailing addresses of eligible Claimants, and the Claim Share for each Class Member, divided between backpay and compensatory damages.

**53.04 Notice of Eligibility Determination** - Based on the EEOC's determination of class eligibility and distribution, the Administrator will mail notices of eligibility determination to all Claimants.

**53.04.01 Ineligible Claimants** - To all Claimants determined to be ineligible, the Administrator will mail a Notice of Determination of Ineligibility (Exhibit F), and a Notice of Rights (Exhibit G).

**53.04.02 Eligible Claimants** - To all Claimants determined to be eligible ("Class Members"), the Administrator will mail a Notice of Eligibility Determination and Settlement Offer (Exhibit H), together with a Notice of Rights (Exhibit G), a Class Member Release (Exhibit B), a check payable to the Class Member in the amount of two hundred fifty

dollars (\$250), the list of attorneys attached as Exhibit I, and a postage-paid envelope addressed to the Administrator. If contacted by a Class Member for attorney referrals, the EEOC will follow its standard procedures, by which three names, taken in order of routine rotation from the EEOC's list of approved counsel, are mailed, with their contact information, to the inquiring Class Member.

**54. Claimant Objections and Fairness Hearing**

**54.01 Scope of Objections** - Claimant objections are limited to (a) challenging the fairness of the eligibility criteria and distribution formula established by the EEOC under Subparagraph 53.01 of this Decree; and/or (b) challenging the eligibility and/or claim share determination of the individual Claimant's claim. Claimants may not challenge the Consent Decree, or any of the terms herein. Accordingly, any informal resolution by the Monitor or determination by the Court of a Claimant's objections, as provided below, must be in accordance with the terms of the Consent Decree, including the \$20,000 limitation per claimant established in Paragraph 53.01, above.

**54.02 Filing Claimant Objections** - A Claimant may raise an objection by delivering to the Monitor a written explanation of the basis for the objection. Objections must be filed within forty-five (45) days after receiving a Notice of Determination of Ineligibility (Exhibit F) or a Notice of Eligibility Determination and Settlement Offer (Exhibit H).

**54.03 Informal Resolution Efforts** - The Monitor shall attempt to resolve the objection and may undertake any additional investigation she deems necessary to resolution. The Claim Objection and Informal Resolution process will not continue for longer than sixty (60) days after the Administrator mails notices of eligibility determination, under Paragraph 53.04, above.

**54.04 Fairness Hearing** - At the close of the informal resolution process under Paragraph 54.03, above, the Monitor will forward all unresolved claimant objections to the Court, with copies to EEOC and Milgard. The Court will

conduct a fairness hearing to determine unresolved objections, if any. At least seven (7) days prior to the fairness hearing, the EEOC will provide the Court, Milgard, the Monitor, and Administrator, a proposed Final Class Distribution List, incorporating any changes necessitated by informal resolution of Claimant objections. The Court may approve the proposed Final Class Distribution List, or order modifications as necessary to effect the Court's rulings on Claimant objections.

- 55. Period for Accepting or Rejecting Settlement Offers** - Class Members will be allowed forty-five (45) days after mailing the Notice of Eligibility and Settlement Offer, to either (a) accept the offer by signing and returning the Class Member Release; or (b) file an objection under Paragraph 54, above. Class Members who file timely objections, will be allowed ten (10) days after informal resolution by the Monitor (Paragraph 54.03), or final determination by the Court (Paragraph 54.04) of their objection, to accept the offer by signing and returning the Class Member Release. Notwithstanding the foregoing 45-day and 10-day submission deadlines, the Administrator will continue to accept Class Member Releases for twenty (20) days after resolution or determination of the last-decided claimant objection or, if no objections are filed, for twenty (20) days after the deadline for filing objections, and any Class Member Release received during this period will be deemed timely submitted. Any Class Member who fails to return the Class Member Release within the time allowed in this Paragraph 55, will be deemed to have rejected the settlement offer. Provided, however, that the EEOC and Milgard may, by agreement, accept a late-returned Class Member Release at any time.
- 56. Administrator's Certification of the Class** - Upon receipt by the Administrator of a signed Class Member Release, the Administrator will forward to Milgard the original signed Class Member Release, and send notice to Milgard and the EEOC that the Class Member has signed the Class Member Release and is therefore deemed an Eligible Class Member. On the first business day after close of the period for accepting Class Member Releases under Paragraph 55, above, the Administrator will provide the EEOC and Milgard with a Certification of the Class, listing all Eligible Class Members, and all

Class Members who have not returned a signed Class Member Release and are thus deemed to have rejected the settlement offer under Paragraph 55, above.

**57. Distribution of Class Settlement Fund**

**57.01 Payments To Eligible Class Members** – Within fourteen (14) days after the Administrator's Certification of the Class, Milgard shall distribute the Class Fund to Eligible Class Members in the amounts reflected in the Final Class Distribution List approved by the Court. To each Eligible Class Member, Milgard will mail two checks drawn on the Class Fund – one for that portion of the gross amount payable to the Eligible Class Member which represents wages, less legally-required deductions, and one check for that portion of the gross amount payable to that Eligible Class Member which represents compensatory damages and is not subject to withholding

**57.02 Distribution of Undistributed and Unclaimed Portion of Class Payment** - All undistributed and unclaimed funds shall be donated to Habitat For Humanity for use only in the construction of homes in Postal Zip Codes 80239, 80010, or 80011. In the event Habitat for Humanity is not scheduled to build in the designated zip codes during the six month period after remaining funds are available for distribution, the funds will be donated to the United Negro College Fund.

**57.03 Tax Treatment of Class Payments**

**57.03.01** Payments to Eligible Class Members will be divided as follows: forty percent (40%) wages, and sixty percent (60%) compensatory damages.

**57.03.02** From payments designated as wages, Milgard will withhold all legally-required deductions, including but not limited to federal and state income taxes and withholding under the Federal Insurance Contributions Act (“FICA”) and Federal Unemployment Tax Act (“FUTA”), and forward such amounts withheld to the appropriate governmental agency.

- 57.03.03** Milgard shall prepare and distribute tax reporting forms to each Eligible Class Member who receives payment under this Decree.
- 57.03.04** Milgard shall make appropriate reports to the Internal Revenue Service and other tax authorities.
- 57.03.05** Milgard shall be responsible for the employer's share of any taxes applicable to payments under this Decree. Eligible Class Members shall be responsible for payment of the employee's share of taxes owed to any governmental authority as a result of payments under this Decree. Any taxes on earnings of the Class Fund which may accrue shall be paid by Milgard as part of the administrative expenses governed and limited by Paragraph 32 of this Decree.

## **IX. REPORTING AND RECORD KEEPING**

### **58. Document Preservation**

- 58.01** For the duration of the Decree, Milgard agrees to maintain such records as are necessary to demonstrate its compliance with this Decree and verify that the reports submitted are accurate, including but not limited to the documents specifically identified below.
- 58.02** For the duration of the Decree and for two years following termination of the Decree, Milgard shall retain the following hard-copy (paper or fiche) and computer records relating to activities at and for the Facility:
- all covered job postings;
  - all applications, including employee applications for open positions;
  - all records regarding selection of successful candidates;
  - all personnel files including all performance appraisals, discipline and termination records;
  - a copy of any advertisement for any open position;
  - all complaints of discrimination or harassment based upon race, and all records of the investigation of those complaints;

- all complaints of retaliation prohibited by statutes enforced by the EEOC, and all records of the investigation of those complaints;
- all notices of rejection to applicants for initial hire, requested change of assignment, or promotion;
- all computerized payroll data; and
- all data utilized in hiring performance reviews and selection decisions for positions filled.

This Paragraph 58 requires only the retention of existing documents and records, and documents and records that are hereinafter created and maintained in the normal course of Milgard's business activities. It imposes no requirement that Milgard create documents or records of a type not already being created or maintained.

**59. Initial Report** - Within one-hundred twenty (120) days of the Effective Date of this Decree, Milgard shall provide the Monitor with the following:

- a status report on the project to review and revise existing policies, as required in Paragraph 46 ("Modification and Implementation of EEO Policies and Procedures") above;
- verification that all supervisors and managers at the Facility, and all human resource employees at the Facility in Colorado or with authority over the Facility, have attended orientation on the terms and provisions of this Decree, as required in Paragraph 40.02 ("Orientation on Consent Decree");
- proposed EEO training programs, as required in Paragraph 45 ("EEO Training"), above.

**60. Periodic Reports**

**60.01** During the term of this Decree, Milgard shall submit six semi-annual reports to the Monitor and the EEOC. With each report, Milgard shall submit all data in electronic form.

**60.02** The first reporting period will begin on the Effective Date of this Decree, and will end on the last day of the fifth complete calendar month thereafter. (e.g. January



16, 2004, through June 30, 2004.) Each subsequent reporting period will be six calendar months.

**60.03** Each report shall contain the following information for the relevant reporting period:

- copies of each applicable job posting during the reporting period;
- a summary, categorized by race, color, and ethnicity, of applicants for each position for which applications were accepted at the Facility during the reporting period, and the identity and race/national origin of the person selected;
- the number of employees employed at the Facility at the start and end of the reporting period, categorized by race, color, and ethnicity;
- copies of all complaints, formal or informal, of race discrimination, harassment or retaliation, and copies of the investigative files relating to each complaint;
- verification of employee attendance for all EEO training conducted during the reporting period.

**60.04 Additional Data** - The EEOC shall have the right to request additional computer or other data from Milgard, so long as the information sought is necessary and consistent with the monitoring of the Decree. Milgard shall comply with a request for additional data within thirty (30) days of the request. Any disputes between Milgard and the EEOC regarding the propriety of any request for additional data shall be resolved in accord with Section X (“Resolution of Disputes and Enforcement of Consent Decree”) of this Decree.

**60.05 Reports of Monitor** - Within thirty days after receiving Milgard's semi-annual compliance reports, as required under Paragraph 60.01, above, the Monitor shall provide a written report to the EEOC and Milgard with respect to Milgard's progress in implementing this Consent Decree. Each report shall:

- provide an assessment of Milgard's success in implementing the terms of the Consent Decree;

- describe any changes in Milgard’s policies or practices made by Milgard in order to implement or meet the objectives of the Consent Decree;
- discuss any of the Monitor’s recommendations;
- include such other information as the Monitor deems appropriate.

## **X. RESOLUTION OF DISPUTES AND ENFORCEMENT OF CONSENT DECREE**

**61. Enforcement by EEOC** - It is expressly agreed that if EEOC concludes that Milgard has breached this Consent Decree, EEOC may initiate a lawsuit in this Court, after complying with the informal resolution procedures set forth in Paragraph 63, below.

**62. Scope of Remedies** - In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate, including without limitation, specific performance and/or extension of the Decree beyond the three-year term.

**63. Obligatory Informal Resolution Efforts.**

**63.01 Notice of Dispute** - Prior to initiating an action to enforce the Decree or to submit an unresolved dispute to the Court, acting Party, the EEOC or Milgard, will provide written notice to the responding Party of the nature of the dispute. As appropriate, this notice shall specify the particular provision(s) believed to have been breached and a statement of the issues in dispute. The notice may also include a reasonable request for documents or information relevant to the dispute.

**63.02 Response to Notice of Dispute** - Within fourteen (14) days after service of the Notice of Dispute, the responding Party will provide a written response and provide the requested documents or information, unless there is a dispute over the request for documents or information. Disputes over requests for documents or information will be resolved in accord with this Section X (“Resolution of Disputes and Enforcement of Consent Decree”) of the Decree.

**63.03 Service** - In order to expedite the process, service of the Notice of Dispute and Response shall be made by hand-delivery, facsimile transmission, or electronic mail.

- 63.04 Meeting** - After service of the Response, the EEOC and Milgard will schedule a telephone or in-person meeting to attempt to resolve the dispute.
- 63.05 Dispute Resolution Period** - If the dispute has not been resolved within thirty (30) days after service of the Notice of Dispute, an action to enforce the Decree or to bring the unresolved dispute before the Court, may be filed in this Court.
- 64. No Delegation Of Authority To Enforce** - Nothing in this Decree is intended to confer upon any person or entity other than the EEOC the right to seek enforcement of this Consent Decree or of any of the terms contained herein. Nothing in this Decree is intended to confer upon any person or entity other than the EEOC or Milgard the right to bring an unresolved dispute arising under this Decree, except as specifically provided in Paragraph 54 (“Claimant Objections and Fairness Hearing”).
- 65. Time Limitations On Enforcement Actions by EEOC** - The EEOC may, within one year after receipt by the Monitor from Milgard of a report required by and in compliance with this Decree, file a motion alleging that a violation of the terms of the Decree occurred based upon that report. If the EEOC learns of facts that it believes establish a violation of the Decree by means other than a report from Milgard, then the EEOC shall have one year from the date on which it learned of such facts within which to file a motion alleging a violation of the Decree. No motion alleging a violation of the Consent Decree may be initiated more than five (5) years after the Effective Date of the Consent Decree.
- 66. Expedited proceedings** - The provisions of this section do not prevent the EEOC from bringing an issue before the Court when the facts and circumstances require immediate Court action. Prior to filing such action, and as early as is practical under the circumstances, Milgard will be notified of the EEOC's intent to invoke this provision. The EEOC's moving papers shall explain the facts and circumstances that necessitate immediate Court action. If the EEOC brings a matter before the Court requiring immediate Court action, copies of the moving papers will be provided to Milgard and the Monitor.

## **XI. MISCELLANEOUS TERMS**

- 67. Attorney Fees And Costs** - The EEOC and Milgard shall bear their own costs and attorneys' fees associated with this litigation and neither shall seek reimbursement for any investigative and/or litigation costs, fees or expenses in this matter.
- 68. Disclosure and Non-Disclosure of Records** - The EEOC will disclose records, or maintain confidentiality of records, in accordance with the standards established in the Freedom of Information Act ("FOIA"). Within five (5) working days of receiving a request relating to this litigation or the underlying charge of discrimination, the EEOC will provide Milgard a copy of the request, and specify the date by which the EEOC is required to respond. During the twenty (20) working day period the EEOC has to respond to a FOIA request, Milgard may submit a statement of its position as to what records the EEOC is required to disclose or maintain confidential, and the EEOC will give due consideration to Milgard's position. Prior to disclosing any records, the EEOC will inform Milgard if the EEOC's position is different from Milgard's. Because of the limited time for the EEOC to respond to a FOIA request, the Parties will cooperate with one another in attempting to promptly identify any differences, so that if necessary, Milgard may seek a protective order.
- 69. Dismissal Of Complaints** - Six (6) months after expiration of this Consent Decree, or six (6) months after the final resolution of any enforcement action or other dispute under this Consent Decree which might be filed with the Court, whichever is later, the Complaint in this action and all claims raised therein against Milgard which have not previously been dismissed with prejudice, will be dismissed, with prejudice, with each Party to bear its own attorneys' fees and costs.
- 70. Computation of Time Periods** - In computing any period of time prescribed or allowed by this Decree, unless otherwise stated such computation shall be made consistent with the Federal Rules of Civil Procedure.
- 71. Notices** - Except as is otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing

and shall be sufficient as hand-delivered, faxed or sent by certified or registered mail to the following persons (or their designated successors):

For Milgard:	Littler Mendelson Lawrence W. Marquess 1200 17 <sup>th</sup> Street, Suite 2850 Denver, CO 80202.5835 Fax: (303) 629-0200
For Ms. Ornelas:	Tom Arckey Arckey & Reha, LLC 26 West Dry Creek Circle, Suite 800 Littleton, CO 80120 Fax: (303) 798-4637
For EEOC:	Joseph H. Mitchell, Regional Attorney EEOC Denver District Office 303 East 17 <sup>th</sup> Avenue, Suite 510 Denver, Colorado 80203 Fax: (303) 866.1375.

Any party may change such addresses by written notice to the other parties, setting forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the Parties may, after agreement memorialized in writing, send each other such notifications, reports and communications by e-mail transmission.

- 72. Recitals Incorporated** - The statements and commitments of the Parties stated in the Recitals By The Parties are incorporated into and treated as part of this Order.
- 73. Amendment** - By mutual consent of the parties, this Consent Decree may be amended in the interest of justice and fairness in order to execute the provisions involved. No waiver, modification, or amendment of any provision of this Decree shall be effective unless set forth in a written agreement executed by the Parties and approved by the Court. Neither Party may approach the Court seeking any modification, amendment, extension, or other order concerning this Consent Decree, without having first discussed, in person or by telephone, the proposed change and sought agreement by or resolution with the non-moving Party.

74. **Implementation** - The Commission and Milgard agree to take all steps that may be necessary to fully effectuate the terms of this Consent Decree.

**SO ORDERED, ADJUDGED AND DECREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
United States District Court Judge

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

BY: \_\_\_\_\_  
Joseph H. Mitchell  
Regional Attorney

Date: \_\_\_\_\_

LEIGH ANN ORNELAS

\_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Rita Byrnes Kittle, Trial Attorney  
U.S. Equal Employment Opportunity  
Commission  
303 East 17th Avenue, Suite 510  
Denver, CO 80203  
Phone: (303) 866-1347

Attorney for Plaintiff EEOC

\_\_\_\_\_  
Tom Arckey  
Arckey & Reha, LLC  
26 West Dry Creek Circle, Suite 800  
Littleton, CO 80120  
Phone: (303) 798-8546

Attorneys for Plaintiff/Intervenor Ornelas

MILGARD MANUFACTURING, INC.

BY: \_\_\_\_\_  
Lawrence W. Marquess, for  
Milgard Manufacturing, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
Lawrence W. Marquess  
Littler Mendelson, P.C.  
Attorneys at Law  
1200 17<sup>th</sup> Street, Suite 2850  
Denver, CO 80202-5835  
Phone: (303) 629-0200

Attorneys for Defendant Milgard  
Manufacturing, Inc.

FIELD(First Name) FIELD(Last Name)

FIELD(New Address 1)

FIELD(New Address 2)

**EXHIBIT A**

**MILGARD CLASS SETTLEMENT FUND  
BENEFITS CLAIM FORM**

**INSTRUCTIONS:** To be eligible for benefits, you must respond to each numbered item below and submit your claim by [DATE]. Claims submitted after [DATE] will not be considered.

**Your identification information**

1. Name:
2. Address:
3. Phone:
4. SSN#

**Contact Person if we are unable to reach you**

5. Name:
6. Address:
7. Phone:
8. Relationship to you:
9. Do you consider yourself to be black? (circle one)  
YES            NO            OTHER (explain below)
10. Do you consider yourself to be African-American? (circle one)  
YES            NO            OTHER (explain below)
11. Did you apply for work at Milgard in Colorado between January 1, 1997, and December 31, 2003? (circle one)  
YES            NO            OTHER (explain below)
12. If you answered YES to Question #11, please answer Questions 12a - 12d.
  - 12a. When and where did you submit your application? \_\_\_\_\_  
\_\_\_\_\_
  - 12b. For what position did you apply \_\_\_\_\_
  - 12c. Were you interviewed by a Milgard representative, and if so and you can remember, what was the interviewer's name? \_\_\_\_\_  
\_\_\_\_\_
  - 12d. Were you offered a job by Milgard after you applied? \_\_\_\_\_



FIELD(First Name) FIELD(Last Name)

FIELD(New Address 1)

FIELD(New Address 2)

**EXHIBIT A**

13. If you weren't offered employment by Milgard, have you been employed by other employers since you applied at Milgard? (circle one)

YES NO

14. If you answered YES to Question #13, please answer Questions 14a - 12d.

14a. How long after you applied at Milgard did you find other employment? \_\_\_\_\_

\_\_\_\_\_

14b. Who was your employer? \_\_\_\_\_

14c. What was your rate of pay? \_\_\_\_\_

14d. How long did you work there? \_\_\_\_\_

Any explanation or additional information you wish to provide: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(use additional pages if necessary).

*I attest under penalty of perjury that the foregoing information is true and correct.*

FIELD(First Name) FIELD(Last Name)

Date

## LISTS OF ACCEPTABLE DOCUMENTS

LIST A		LIST B		LIST C
Documents that Establish Both Identity and Employment Eligibility	OR	Documents that Establish Identity	AND	Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		1. U.S. social security card issued by the Social Security Administration ( <i>other than a card stating it is not valid for employment</i> )
2. Certificate of U.S. Citizenship ( <i>INS Form N-560 or N-561</i> )		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		2. Certification of Birth Abroad issued by the Department of State ( <i>Form FS-545 or Form DS-1350</i> )
3. Certificate of Naturalization ( <i>INS Form N-550 or N-570</i> )		3. School ID card with a photograph		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Unexpired foreign passport, with <i>I-551</i> stamp or attached <i>INS Form I-94</i> indicating unexpired employment authorization		4. Voter's registration card		4. Native American tribal document
Permanent Resident Card or Alien Registration Receipt Card with photograph ( <i>INS Form I-151 or I-551</i> )		5. U.S. Military card or draft record		5. U.S. Citizen ID Card ( <i>INS Form I-197</i> )
6. Unexpired Temporary Resident Card ( <i>INS Form I-688</i> )		6. Military dependent's ID card		6. ID Card for use of Resident Citizen in the United States ( <i>INS Form I-179</i> )
7. Unexpired Employment Authorization Card ( <i>INS Form I-688A</i> )		7. U.S. Coast Guard Merchant Mariner Card		7. Unexpired employment authorization document issued by the INS ( <i>other than those listed under List A</i> )
8. Unexpired Reentry Permit ( <i>INS Form I-327</i> )		8. Native American tribal document		
9. Unexpired Refugee Travel Document ( <i>INS Form I-571</i> )		9. Driver's license issued by a Canadian government authority		
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph ( <i>INS Form I-688B</i> )		<b>For persons under age 18 who are unable to present a document listed above:</b>		
		10. School record or report card		
		11. Clinic, doctor or hospital record		
		12. Day-care or nursery school record		

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)



*Equal Employment Opportunity Commission*

v.

*Milgard Manufacturing, Inc.  
Case No. 01-MK-1731 (D.Colo.)***SETTLEMENT AND RELEASE OF CLAIMS BY** \_\_\_\_ [Insert Name] \_\_\_\_

1. I, \_\_\_\_\_ [Print your name], Social Security No. \_\_\_\_\_, whose current home address is \_\_\_\_\_,

\_\_\_\_\_ understand that Milgard Manufacturing, Inc. d/b/a Milgard Windows ("Milgard") and the United States Equal Employment Opportunity Commission (the "EEOC") have agreed to settle the EEOC's Complaint in Civil Action No. 01-MK-1731, United States District Court for the District of Colorado, which alleges that Milgard's hiring practices have had the effect of discriminating against Blacks and/or African Americans in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*

2. I also understand that, because I have been determined to be a "Class Member" under the Consent Decree by which Milgard and the EEOC have settled the case, Milgard has agreed to pay to me the gross amount of \_\_\_\_\_ dollars, less legally-required withholding and taxes, provided that I agree to the terms of and execute this Settlement and Release of Claims ("Release"). The amount Milgard actually pays me will be less than the amount stated in the previous sentence because Milgard will withhold taxes from that amount as required by local, state and federal law. I understand that I will remain solely responsible for any tax liability related to my receipt of this payment.

3. In exchange for Milgard's payment to me described in paragraph 2, above, I agree to release and discharge Milgard, and any successor, parent, affiliate or subsidiary company of Milgard, their present and former officers, directors, employees, agents, representatives, volunteers, legal representatives, accountants, attorneys, successors, parent, affiliates, and assigns (all collectively "Released Parties"), from all claims, demands, and actions of any nature, known or unknown, that I may have against Released Parties, including but not limited to claims, whether known or unknown, related in any way to my application or applications for employment and/or to Milgard's recruitment, hiring, or employment practices, policies, and/or actions, which claims (1) existed at or before the date on which I execute this Release and/or (2) arise from and/or are based in any way, in whole or in part, on facts or actions which occurred on or before the date on which I execute this Release, including but not limited to, any rights or claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*; the Civil Rights Act of 1866, as reenacted, 42 U.S.C. § 1981; the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*; the National Labor Relations Act, as amended, 29 U.S.C. § 141, *et seq.*; the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; Executive Order 11246; the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, *et seq.*; the Colorado Wage Claim Act, C.R.S. § 8-4-101, *et seq.*; similar statutes of any other state which might be applicable, state common law; and any and all other local, state, and/or federal statutory, executive order, or constitutional provisions pertaining to an employment relationship. This release and waiver also specifically includes, but is not limited to, any claims in the nature of tort or contract claims including, but not limited to any claim of breach of contract, promissory estoppel, fraud, negligent misrepresentation, intentional or negligent infliction of emotional distress, interference with contract or prospective business relationship, defamation, and other such claims. This release also



includes any and all claims concerning attorney fees, costs, and any and all other expenses related to the claims released herein. It is the intention of the parties that this Release be construed as broadly as possible. Provided, however, that this release and waiver shall not apply to any rights which, by law, may not be waived; to rights and claims which arise from acts or events occurring after the effective date of this Agreement; or to claims for breach of this Agreement.

4. I understand and agree that, by making the payment described in paragraph 2, above, Milgard does not admit, and specifically denies, that it has committed any violation of any law, that it has discriminated against me, or that it has acted improperly towards me in any way. Milgard denies any such allegation

5. By my signature on this Release, I certify that I have read this Release carefully and that I understand the meaning of this Release and that by signing it and accepting the payment described in paragraph 2, I am forever giving up the right to pursue any legal claims described above that I may have against Milgard and others related to Milgard. I also certify that I understand and acknowledge that I had up to 21 days to consider this Release and to review this Release with an attorney chosen by me, before signing it, and that if I did not choose to seek the assistance of an attorney, I made that decision freely and without coercion. I also understand that I may revoke my agreement to this Settlement and Release by calling the EEOC at \_\_\_\_\_ or delivering a written notice to revoke to the EEOC at [address], within seven (7) days after I signed the Release.

*Signature*

I, \_\_\_\_\_, declare, under penalty of perjury, that I have read the Release and that all of the statements and information contained in the Release are true and correct.

Signature

\_\_\_\_\_  
Printed Name

Date of Signature:

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by

\_\_\_\_\_.

WITNESS MY HAND AND OFFICIAL SEAL.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## NOTICE TO EMPLOYEES

This Notice is being posted as part of the remedy agreed to pursuant to an Consent Decree between Milgard Manufacturing, Inc. and the Equal Employment Opportunity Commission (EEOC).

**Unlawful Discrimination:** Under federal law, it is unlawful for an employer to discriminate based on race, color, religion, sex, national origin, age (over 40), or disability. This means that a supervisor or manager cannot make decisions about hiring, promotion, pay, or other conditions of employment, based on race, color, religion, sex, national origin, age (over 40), or disability. This also means that the work environment should be free from harassment or ridicule based on race, color, religion, sex, national origin, age (over 40), or disability.

**Unlawful Retaliation:** It is also unlawful to discriminate or retaliate against any individual who reports or complains about what he or she believes to be unlawful discrimination based on race, color, religion, sex, national origin, age (over 40), or disability.

**Reporting Improper Conduct:** If you are aware of any events, conduct, or information, which you believe may indicate some improper discrimination or harassment, it is very important that you report the information so the necessary steps may be taken to investigate, identify, and promptly remedy any problems. You may report such improper to conduct to any of the following:

**Reporting to Milgard:** Within the Milgard organization, you may make such a report to the Director of Employee Relations, or to any supervisor or manager. By reporting a problem to Milgard, you do not waive any rights to file a charge of discrimination with the EEOC or the Colorado Civil Rights Division.

**Reporting to the Monitor:** Under the Consent Decree between EEOC and Milgard, \_\_\_\_\_ has been designated as a monitor to ensure enforcement of the Consent Decree. By reporting a problem to the Monitor, you do not waive any rights to file a charge of discrimination with the EEOC or the Colorado Civil Rights Division. You may directly contact the Monitor:

[insert name and contact information for Monitor]

**Reporting to the U.S. Equal Employment Opportunity Commission:** The EEOC is responsible for enforcing federal laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Denver District office of the EEOC, at any of the following numbers:

Telephone: 303.866.1300  
TTY: 303.866.1950  
Fax: 303.866.1085  
Toll Free: 1.800.669.4000

The Denver District office of the EEOC is located at 303 East 17<sup>th</sup> Avenue, Suite 510, Denver, Colorado 80205.

**Reporting to the Colorado Civil Rights Division:** The CCRD is the agency responsible for enforcing state laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Colorado Civil Rights Division at any of the following numbers:

Telephone: (303) 894-2997  
Fax: (303) 894-7830  
Toll Free English/Spanish: (800) 262-4845

The Colorado Civil Rights Division is located at 1560 Broadway, Suite 1050, Denver, Colorado 80202.



## AGREEMENT AND RELEASE

**Exhibit D To Consent Decree  
In Resolution Of  
*Equal Employment Opportunity Commission and Leigh Ann Ornelas*  
v.  
*Milgard Manufacturing, Inc.*  
Case No. 01-MK-1731 (OES)**

This AGREEMENT AND RELEASE ("Agreement"), is entered into by and between Milgard Manufacturing, Inc. ("Milgard"), and Leigh Ann Ornelas ("Ms. Ornelas") pursuant to the Consent Decree entered by the Court in resolution of the above-referenced case (the "Action").

In consideration of the payments by Milgard to Ms. Ornelas and her attorneys recited in paragraphs 48 and 49 of the Consent Decree, Ms. Ornelas agrees as follows:

1. Release And Waiver of Claims by Ms. Ornelas.

Ms. Ornelas hereby releases and discharges Milgard, and any successor, parent, affiliate or subsidiary company of Milgard, their present and former officers, directors, employees, agents, representatives, volunteers, legal representatives, accountants, attorneys, successors, parent, affiliates, and assigns (all collectively "Released Parties"), from all claims, demands, and actions of any nature, known or unknown, that Ms. Ornelas may have against Released Parties, including but not limited to claims raised, or that could have been raised, in the Action or that in any manner relate to, arise out of or involve any aspect of Ms. Ornelas' employment with or separation of employment from Milgard, including but not limited to, any rights or claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; the Civil Rights Act of 1866, as reenacted, 42 U.S.C. § 1981; the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the National Labor Relations Act, as amended, 29 U.S.C. § 141, et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; Executive Order 11246; the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq.; the Colorado Wage Claim Act, C.R.S. § 8-4-101, et seq.; state common law; and any and all other local, state, and/or federal statutory, executive order, or constitutional provisions pertaining to an employment relationship. This release and waiver also specifically includes, but is not limited to, any claims in the nature of tort or contract claims including, but not limited to any claim of breach of contract, promissory estoppel, fraud, negligent misrepresentation, intentional or negligent infliction of emotional distress, interference with contract or prospective business relationship, defamation, and other such claims. This release also includes any and all claims concerning attorney fees, costs, and any and all other expenses related to the claims released herein. It is the intention of the parties that this Release be construed as broadly as possible. Provided, however, that this release and waiver shall not apply to any rights which, by law, may not be waived; to rights and claims which arise from acts or events occurring after the effective date of this Agreement; or to claims for breach of this Agreement.



2. Confidentiality.

Ms. Ornelas will not actively and affirmatively take steps to publicize the Action, the facts and allegations involved in the Action, and/or the terms of the Consent Decree, including but not limited to the payments which she receives under the Consent Decree, to persons beyond her immediate family, accountants, and lawyers. Provided, however, that should she be contacted by a person outside of her immediate family who inquires concerning the Consent Decree and/or the Action resolved by the Consent Decree, she may only answer questions concerning the terms of the Consent Decree and state that the case and her claims are resolved to her satisfaction and that she feels vindicated by the result.

3. No Cooperation in Other Actions.

Ms. Ornelas agrees that she will not encourage, assist, or cooperate with any other person or entity in the investigation or filing of any claim or action against the Released Parties or any of them unless required by subpoena to do so. Nothing in this Paragraph 3 shall be construed to prohibit Ms. Ornelas from filing a charge or complaint of discrimination with the Equal Employment Opportunity Commission ("EEOC") or participating in any such investigation or proceeding conducted by the EEOC.

4. Acknowledgments.

Ms. Ornelas acknowledges that she has been given at least twenty-one (21) days to consider this Agreement, and that she has consulted with her attorney prior to signing this Agreement. Ms. Ornelas acknowledges that no promises or representations have been made to induce her to sign this Agreement other than as expressly set forth herein and that she has signed this Agreement as a free and voluntary act.

Ms. Ornelas acknowledges that she understands that she has a period of seven (7) days after the date on which she signs this Agreement to void her signature and the provisions of this Agreement and revoke this Agreement by delivering a written notice of revocation to counsel for Milgard, Lawrence Marquess, Littler Mendelson P.C., 1200 17th Street, Suite 2850, Denver, Colorado, 80202, fax no. (303) 629-0200. She further understands that by doing so, she forfeits any right to payments under the Consent Decree.

5. Other Provisions.

The laws of the State of Colorado shall govern any dispute arising under the terms of this Agreement and release and the forum for such dispute shall be in a state or federal court within the state of Colorado. In the event of any dispute arising under the terms of this Agreement and Release which results in legal action filed with a court, the prevailing party shall be entitled to payment from the other party for all reasonable attorneys' fees and costs.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

By: \_\_\_\_\_  
**LEIGH ANN ORNELAS**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

By: \_\_\_\_\_  
**LAWRENCE W. MARQUESS,**  
**ON BEHALF OF MILGARD MANUFACTURING, INC.**

Denver:48575.1 021950.1020





## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Milgard Class Settlement Fund Administrator

[insert Administrator address &amp; phone number]

[Current Date)

**NOTICE OF SETTLEMENT  
CLAIM FILING DEADLINE - [DATE]**

FIELD(First Name) FIELD(Last Name)

FIELD(New Address 1)

FIELD(New Address 2)

Dear FIELD(First Name) FIELD(Last Name):

The United States Equal Employment Opportunity Commission has reached a settlement agreement with Milgard Manufacturing, Inc. d/b/a Milgard Windows, of a lawsuit alleging discriminatory hiring based on race and color. Although the allegations have not been proven and Milgard denies that it has ever discriminated as alleged, Milgard and the EEOC have agreed to settle the lawsuit. The settlement provides a fund for payments to individuals who are Black and/or African-American, and qualify under the terms of the settlement.

Milgard records indicate that you applied for work at Milgard in [year], and that you were not hired. For your reference, a copy of your application is attached. [Alternate language: Records of [temporary staffing agency] indicate that in [year] you worked a temporary assignment at Milgard, and were not offered a permanent position.] *If you are Black and/or African-American, you are entitled to submit a claim for benefits from the settlement fund.*

To make your claim, you must do three things.

1. **Blue:** Complete the enclosed **Blue Claim Form**.
2. **Pink:** Copy the documents necessary to show you are now eligible to work in the United States, or were eligible at the time you applied for work at Milgard. The documents required are listed on the enclosed **Pink List**. You may submit one document from List A, OR you may submit one document from List B AND one document from List C. If you are no longer living in the United States, you may still submit a claim.
3. Return the **Blue Claim Form** and the *copied documents from the Pink List* to the Milgard Class Settlement Fund Administrator, [address] by **[DATE]**. You should use the enclosed pre-addressed envelope for this purpose. *All claims must be received by [date]. Claims received after [date] will be ineligible for consideration.*

Additional information regarding the lawsuit and the settlement is available at [insert website], or you may contact [Claims Administrator].



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Milgard Class Settlement Fund Administrator  
[insert Administrator address & phone number]

MILGARD CLASS SETTLEMENT FUND  
NOTICE OF DETERMINATION OF INELIGIBILITY

FIELD(First Name) FIELD(Last Name)  
FIELD(New Address 1)  
FIELD(New Address 2)

Dear FIELD(First Name) FIELD(Last Name):

There are four requirements to be eligible for payment from the Milgard Class Settlement Fund:

1. You must be African-American or Black;
2. Between January 1, 1997 and [date], you applied for a job at Milgard, or worked at Milgard through a temporary staffing company;
3. You were not hired by Milgard; and
4. You are now eligible to work in the United States, or were eligible at the time you were trying to get a job at Milgard.

Based on the information you provided, you do not meet one or more of the above requirements, and are therefore ineligible for benefits from the Milgard Class Settlement Fund. This determination is based on the following:

- ☐ Milgard offered you a job, and on [date] you failed the drug test. (Requirement #3).
- ☐ Milgard offered you a job, and on [date] you failed to report to work. (Requirement #3).
- ☐ On [date] you rejected a job offer from Milgard. (Requirement #3).
- ☐ Milgard employed you from [insert dates]. (Requirement #3).
- ☐ There is insufficient evidence that you applied for work at Milgard between January 1, 1997, and [effective date]. (Requirement #2).
- ☐ There is insufficient evidence that you are now eligible to work in the United States, or were eligible at the time you were seeking work at Milgard. (Requirement #4).

***Right to Object - Filing Deadline: [date]***

If you disagree with this determination or have additional evidence to prove the requirement which has not been met, you may object to this determination of ineligibility by sending a written explanation of your concerns, together with any additional records or other evidence, to [insert name and address of monitor]. You should use the enclosed pre-addressed envelope for this purpose. ***The deadline for filing objections is [date].***

***Additional Information***

For additional information regarding the objection process, please see the enclosed Notice of Rights (Yellow). Information regarding the lawsuit and the settlement is also available at [insert website], or you may contact [insert Class Administrator name, address, phone].





## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Milgard Class Settlement Fund Administrator  
[insert Administrator address & phone number]

EXHIBIT G

FIELD(First Name) FIELD(Last Name)  
FIELD(New Address 1)  
FIELD(New Address 2)

### MILGARD CLASS SETTLEMENT FUND NOTICE OF RIGHTS

The Milgard Class Settlement Fund was created to settle a lawsuit filed by the U.S. Equal Employment Opportunity Commission against Milgard Manufacturing, Inc. The lawsuit alleged discrimination in hiring based on race and color. Although the allegations have not been proven in court, and Milgard denies that it has ever discriminated as alleged, Milgard and the EEOC have agreed to settle the lawsuit. The settlement provides a fund for payments to individuals who are Black and/or African-American, and qualify under the terms of the settlement.

With this Notice of Rights you will have received either (a) a Notice of Determination of Ineligibility, which states that you are not eligible for a payment from the settlement fund; or (b) a Notice of Eligibility and Settlement Amount, which tells you that you are eligible for a payment and the amount of the payment determined by the EEOC.

#### *Eligibility Requirements*

There are four requirements to be eligible for payment from the Milgard Class Settlement Fund:

1. You must be African-American or Black;
2. Between January 1, 1997 and [date], you applied for a job at Milgard, or worked at Milgard through a temporary staffing company;
3. You were not hired by Milgard; and
4. You are now eligible to work in the United States, or were eligible at the time you were trying to get a job at Milgard.

#### *Your Right to File an Objection - Filing Deadline [DATE]*

If you believe that you have been treated unfairly, or if you believe the process for distributing the settlement fund is unfair, you may object by sending a written explanation of your concerns to [insert monitor name and address.] [Monitor name] is a neutral party, not associated with either EEOC or Milgard. [Monitor] will contact you and attempt to resolve your objection. If [Monitor] is unable to resolve your objection, [Monitor] will forward your objection to U.S. District Court for consideration at a fairness hearing to be scheduled. If you have filed a written objection, you will be entitled to speak at the fairness hearing. *The deadline for filing objections is [date].*

#### *Fairness Hearing*

The settlement has been approved by the judge in this case. However, if objections are filed which are not resolved by the Monitor, no payments will be made until after the judge holds a fairness hearing to decide those unresolved objections. If such a hearing is necessary, you will be notified of the date, time, and location of the hearing. You are entitled to be present at the fairness hearing, but only people who have filed objections will be entitled to speak at the hearing.

#### *Additional Information*

Additional information regarding the lawsuit and the settlement is available at [insert website], or you may contact [Claims Administrator].



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Milgard Class Settlement Fund Administrator  
[insert Administrator address & phone number]

MILGARD CLASS SETTLEMENT FUND  
NOTICE OF ELIGIBILITY AND SETTLEMENT AMOUNT

FIELD(First Name) FIELD(Last Name)  
FIELD(New Address 1)  
FIELD(New Address 2)

Dear FIELD(First Name) FIELD(Last Name):

Based on the information you provided, the EEOC has determined that you are eligible to receive a settlement amount of \$\_\_\_\_\_ from the Milgard Class Settlement Fund. This settlement amount will be paid in exchange for your signing and returning the enclosed "Settlement and Release of Claims." By signing the Settlement and Release of Claims, you are agreeing to give up any and all claims which you may have against Milgard Manufacturing, Inc. and related entities.

***Advice of an Attorney***

The **green** form enclosed is a formal legal document called "Settlement and Release of Claims", which you must sign in order to receive your settlement payment. ***You are strongly encouraged to consult with a lawyer before signing the green form.***

The enclosed check for \$250 is intended to help you pay a lawyer to advise you about the meaning of the green form and whether you should sign it in exchange for payment from the settlement fund. The purple pages enclosed are a list of attorneys who specialize in employment law and should be able to advise you regarding this matter.

***Right to Object - Filing Deadline: [date]***

If you disagree with this determination, you may object by sending a written explanation of your concerns, together with any additional records or other evidence, to [insert name and address of monitor]. You should use the enclosed pre-addressed envelope for this purpose. ***The deadline for filing objections is [date].***

***Additional Information***

For additional information regarding the objection process, please see the enclosed Notice of Rights (Yellow). Information regarding the lawsuit and the settlement is also available at [insert website], or you may contact [insert Class Administrator name, address, phone].



## COLORADO ATTORNEYS

Listed in the 2003 Colorado Legal Directory in the specialty area of  
Employment Law, representing Employees

Allman, Robert L.  
Allman & Mitzner LLC  
1860 Blake St., Ste. 200  
Denver, Co 80202  
303.293.9393  
Fax: 303.293.3130  
[rallman@allman-mitzner.com](mailto:rallman@allman-mitzner.com)

Bangert, Patricia Sue  
Powers Phillips PC  
700 17th St., Ste. 1600  
Denver, Co 80202  
303.382.4170  
Fax: 303.293.8938  
[tbang@ppbfh.com](mailto:tbang@ppbfh.com)

Bechtold, Joan M.  
Collison & Bechtold LLC  
1756 Gilpin St.  
Denver, Co 80218  
303.388.4551  
Fax: 303.388.8324  
[jbechtold@collisonbechtold.com](mailto:jbechtold@collisonbechtold.com)

Benezra & Culver, LLC  
141 Union Blvd., Ste. 260  
Lakewood, Co 80228  
303.716.0254  
Fax: 303.716.0327  
[bc@bc\\_law.com](mailto:bc@bc_law.com)

Berger, Michael H.  
Koff Corn & Berger PC  
303 E. 17th Ave., Ste. 940  
Denver, Co 80203  
303.861.1166  
Fax: 303.861.0601  
[mberger@wckblaw.com](mailto:mberger@wckblaw.com)

Birch, Erika  
King & Greisen LLC  
1670 York St.  
Denver, Co 80206  
303.298.9878  
Fax: 303.298.9879  
[birch@kinggreisen.com](mailto:birch@kinggreisen.com)

Bottaro, Michael R  
Hillyard Barnhart Ekker &  
McNally, LLP  
7887 E. Belleview Ave. Ste 1200  
Englewood, CO 80111  
303.793.0700  
Fax: 303.793.1950

Mark S. Bove, P.C.  
1775 Sherman St., Ste. 1775  
Denver, Co 80203  
303.861.2702  
Fax: 303.861.2706  
[msbove@aol.com](mailto:msbove@aol.com)

Brake, Andrew T., PC  
777 E. Girard Ave., Ste. 200  
Englewood, Co 80110  
303.806.9000  
Fax: 303.806.9578

Buescher, Thomas Barry  
Brauer Buescher Goldhammer &  
Kelman PC  
1563 Gaylord St.  
Denver Co 80206  
303.333.7751  
Fax: 303.333.7758  
[buescher@brauerfirm.com](mailto:buescher@brauerfirm.com)

Bull, James C.  
Bucholtz & Bull PC  
5575 DTC Pkwy., Ste. 230  
Greenwood Village, Co 80111  
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